FILED MARCH 14, 2014

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: **12-O-15176 - LMA**
	)	**(12-O-16059; 12-O-17370;**
KENNETH MATTHEW COOKE,	)	**12-O-18096)**
	)	
Member No. 159341,	)	**DECISION**
	)	
A Member of the State Bar.	)	
	)	
	)	

Introduction[1]

In this disciplinary matter, respondent Kenneth Matthew Cooke is charged with 15 counts of professional misconduct in four client matters. The charged acts of misconduct include: (1) failure to competently perform legal services (four counts); (2) failure to refund unearned fees (three counts); (3) failure to render accounts (three counts); (4) failure to cooperate with the State Bar (two counts); (5) failure to promptly release papers and property; (6) failure to communicate; and (7) failure to deposit funds in client trust account.

This court finds, by clear and convincing evidence, that respondent is culpable of 14 counts of misconduct.[2] Based on the nature and extent of culpability, as well as the applicable

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

[2] In Count Five, respondent was charged with failure to deposit client funds in a trust account. The State Bar requested that Count Five be dismissed. The court granted the State Bar's request and dismissed Count Five with prejudice.

aggravating and mitigating circumstances, in conjunction with meeting the goals of attorney discipline, the court recommends, among other things, that respondent be actually suspended from the practice of law for a minimum of 30 months and remain suspended until he makes specified restitution and until he satisfactorily proves to the State Bar Court his rehabilitation, present fitness and learning and legal ability under the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(c)(1).

Significant Procedural History

The State Bar of California, Office of the Chief Trial Counsel (State Bar), initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on July 9, 2013. Respondent, by and through his then-attorney, Scott Drexel, filed a response to the NDC on October 16, 2013.

The parties executed a Stipulation as to Facts, Conclusions of Law and Admission of Documents on December 17, 2013, which was filed with the court on that same date. Respondent stipulated to almost all of the misconduct alleged in the NDC.

A one-day trial was held on December 17, 2013. Deputy Trial Counsel Hugh G. Radigan represented the State Bar. Attorney Edward O. Lear represented respondent at trial.[3] This matter was submitted for decision, subsequent to the completion of trial, on December 17, 2013.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 15, 1992, and has been a member of the State Bar of California at all times since that date.

The following findings of fact are based on the Stipulation as to Facts and Conclusions of Law filed on December 17, 2013, and the testimony and evidence presented at trial.

[3] Attorney Scott Drexel represent respondent until the first day of trial, i.e., December 17, 2013.

Case No. 12-O-15176 – The Lopez Matter

Facts

On February 1, 2010, Hugo Sotelo and Maria Lopez (the Lopezes) hired respondent to represent them for the purpose of filing a Chapter 7 bankruptcy proceeding and to explore debt consolidation on their behalf. At that time, the Lopezes went to respondent's office, where they met with an assistant in respondent's employ to whom they provided their financial information. Maria Lopez additionally advised the office assistant that her husband was unemployed and that they were at risk of losing their home. Respondent knew that time was of the essence.

Between February 1, 2010, and March 20, 2010, the Lopezes paid respondent $1,450 in advanced attorney fees. The initial payment of $500 was made on February 1, 2010, by credit card payable to Cabral Attorney Service (CAS). CAS was owned and operated by Pedro Cabral (Cabral), respondent's non-attorney office manager.

On March 31, 2010, an office assistant employed by respondent advised the Lopezes that the $500 payment made by credit card on February 1, 2010, did not clear and needed to be repaid. The Lopezes terminated respondent and demanded a refund.

Respondent did not file a bankruptcy petition or consolidate the Lopezes' debts. Nor did he otherwise provide services of any value to the Lopezes. Respondent did not earn any of the $1,450.

After March 31, 2010, Maria Lopez repeatedly called respondent's office renewing her request for a refund. Respondent, however, failed to refund any of the unearned fees.

On March 21, 2012, the Lopezes filed a small claims action against respondent seeking the refund. Respondent failed to appear at the small claims hearing and, thereafter, a judgment was entered against him in the amount of $1,450. Respondent has failed to satisfy the judgment, provide a refund of fees, or provide an accounting.

Respondent did not earn any of the $1,450 in advanced fees advanced to him by the Lopezes. Respondent failed to refund any portion of the $1,450 advanced fees paid by the Lopezes and also failed to provide Lopez with an accounting for the advanced fees.

Conclusions

Count One - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A), when after securing the Lopezes' financial information at the initial February 1, 2010 meeting with them and having been advised that the Lopezes were at risk of losing their home, and knowing that time was of the essence, respondent, nonetheless, failed to file the bankruptcy petition or consolidate the Lopezes' debts or otherwise provide any services of value on their behalf.

Count Two - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. By failing to refund any portion of the $1,450 in advanced attorney fees paid by the Lopezes, respondent failed to promptly refund any part of a fee paid in advance that had not been earned in wilful violation of 3-700(D)(2).

Count Three - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

By failing to provide the Lopezes with an accounting for the $1,450 in advanced fees they had paid to him, respondent failed to render appropriate accounts to a client regarding all the funds coming into his possession, in willful violation of rule 4-100(B)(3).

Case No. 12-O-16059 – The Urias Matter

Facts

On February 18, 2010, Santiago Urias and Wendy Gomez (the Uriases) hired respondent to represent them and file a Chapter 13 bankruptcy proceeding on their behalf. The Uriases agreed to pay a flat fee of $4,000 for these services. The retainer provided that $2,000 of the flat fee must be paid prior to any filing of the petition. At the time they retained respondent, the Uriases paid respondent $1,500 of the flat fee. The Uriases paid another $500 to respondent on September 8, 2010. On that same date, the Uriases also paid an additional $300 "emergency fee," a filing fee of $274, and $700 to accomplish appraisals of the involved real properties affected by the bankruptcy. The Uriases received receipts for each of the afore-listed payments.

On September 11, 2010, respondent filed the Chapter 13 petition on behalf of the Uriases, bankruptcy petition No. 2:10-bk-48720-ER (first petition), in the U. S. Bankruptcy Court, Central District of California (Los Angeles). On September 11, 2010, the bankruptcy court served upon respondent a Case Commencement Deficiency Notice advising him that the petition would be dismissed within fourteen days, if itemized deficiencies were not addressed. The bankruptcy court also issued and served respondent with an order on September 11, 2010, ordering compliance with bankruptcy rules 1007 and 3015(b), and a notice of intent to dismiss the case. Respondent failed to cure the deficiencies.

On October 1, 2010, the first petition was dismissed for failure to file schedules, statements, and/or a plan within fourteen days of the filing of the petition.

On October 8, 2010, respondent filed a motion to vacate the dismissal pursuant to rule 60(b) of the Federal Rules of Civil Procedure. On October 18, 2010, prior to the court ruling on the motion to vacate, respondent filed, on behalf of the Uriases, a second Chapter 13 bankruptcy petition, i.e., No. 2:10-bk-55008-WB (second petition), in the U.S. Bankruptcy Court, Central District of California (Los Angeles). Respondent failed to disclose to the court in that second petition filing that a first petition had been filed or to disclose that a motion to vacate the dismissal of the first petition was pending.

Thereafter, on October 18, 2010, respondent filed a third Chapter 13 bankruptcy petition on behalf of the Uriases in the U. S. Bankruptcy Court, Central District of California (Riverside), No. 6:10-bk-43712-MJ (third petition). Respondent failed to identify the filing of either the first petition or the second petition within the third petition.

On October 18, 2010, respondent filed a Disclosure of Compensation of Attorney for Debtor (Disclosure), indicating that respondent had agreed to accept $3,300 in compensation from the debtor for services associated with the Chapter 13 filing, and that prior to filing the Disclosure, debtor had paid $1,500 to respondent. In reality, however, the Uriases had paid a total of $2,300 in compensation to respondent prior to the filing of the petition.

On October 19, 2010, the court ordered that the third petition be transferred to Los Angeles from Riverside for proper venue. Upon transfer, a new case number was assigned to the matter, No. 2:10-bk-55008-VK, and it was consolidated with the second petition.

On May 11, 2011, the trustee disbursed $1,800 to respondent in order to cover the remainder of respondent's outstanding fee, which allegedly had not been paid by the Uriases. As a result, respondent was paid a total of $4,100, which was in excess and contrary to the amount to which respondent claimed he was entitled in the Disclosure of Compensation filing.

On May 12, 2011, the court dismissed the third petition for failure to file a cumulative post-petition mortgage declaration and for failure to address the trustee's objection regarding the infeasibility of the debtors' proposed plan.

On May 13, 2011, the Uriases sent an email to respondent, wherein they effectively terminated his services and demanded a return of the attorney fees and appraisal costs they had advanced to him. On May 18, 2011, the Uriases again sent an email to respondent and requested a full refund of attorney fees and costs. Respondent received the request; but, he has not provided a refund to them.

On June 2, 2011, respondent filed a motion to vacate the dismissal of the third petition based upon excusable inadvertence. The court granted the requested relief and vacated the dismissal on June 16, 2011.

On July 27, 2011, the trustee filed a motion requiring respondent to provide a detailed accounting of fees received and seeking disgorgement of excess fees received. Thereafter, on March 20, 2012, the court granted the trustee's motion to provide a detailed accounting and respondent was ordered to disgorge $100 in fees. Respondent, however, has failed to provide the Uriases with an accounting for the $2,300 in advanced fees and the $700 in advanced costs paid to him by the Uriases.

On October 27, 2011, a confirmation hearing was conducted. Respondent failed to appear and failed to timely file required verification of mortgage payments by the Uriases. As a result, on November 3, 2011, the court dismissed the consolidated second and third Chapter 13 petitions. Respondent had notice of the confirmation hearing.

On May 7, 2012, the Uriases sent a demand letter to respondent by certified mail requesting a full refund. Respondent received the request, but did not respond to the demand.

On May 14, 2012, the court discharged the trustee and ordered the closing of case No. LA 2:10-bk-55008-WB.

Conclusions

Count Four - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to appear at the October 27, 2011 confirmation hearing and by failing to timely submit verification of mortgage payments by the Uriases, as well as by having failed to properly file the required schedules and statements within the first filed petition, which resulted in the dismissal of the bankruptcy petition, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Six - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession and render appropriate accounts to the client regarding such property.

By failing to provide the Uriases with an accounting for the $2,300 in advanced fees and $700 in advanced costs that he had received from the Uriases, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in wilful violation of rule 4-100(B)(3).

Case No. 12-O-17370 – The Tyson-Coppinger Matter

Facts

On April 3, 2012, respondent was employed by Chris Tyson-Coppinger (Coppinger) to explore a potential bankruptcy on her behalf and to consult with her divorce attorney regarding the tax ramifications of negotiating a second mortgage on the marital property, as well as the tax ramifications of an outstanding debt consisting of delinquent homeowner association dues.

Additionally, respondent was to contact Coppinger's trust manager concerning preservation of her inheritance income. Coppinger paid respondent $2,000 to cover advanced fees.

On April 4, 2012, respondent sent an email to the attorney for the homeowner association, confirming his retention by Coppinger and explaining his objective, which was to address the outstanding delinquent obligation. On April 4, 2012, respondent also sent an email to Coppinger advising her of tax consequences associated with the second mortgage.

On July 20, 2012, respondent was informed by Coppinger's divorce attorney that pursuant to a court order issued within the divorce proceeding, it would be necessary within ten days to designate an attorney to address the negotiation of the second trust deed on Coppinger's behalf. On July 23, 2012, respondent advised Coppinger's divorce attorney that he would act as the designated attorney on behalf of Coppinger, regarding the second trust deed. Respondent scheduled a meeting for July 25, 2012, with Coppinger's divorce attorney, to discuss the matter.

Respondent failed to meet with Coppinger's divorce attorney on July 25, 2012. On August 8, 2012, Coppinger's divorce attorney emailed respondent expressing her frustration with respondent's lack of responsiveness and underscoring the urgent nature of the matter. On August 11, 2012, respondent contacted Coppinger's attorney via email to advise her that he was out of the country on a two week vacation, that his staff was available in his absence to assist with respect to the second trust deed negotiation, and that he would be returning on August 15, 2012.

On August 17, 2012, Coppinger terminated respondent and requested the return of her client file in its entirety, as well as a full refund. On September 5, 2012, Coppinger emailed respondent and stated she had not yet received her file materials and an accounting. Respondent received the September 5th email. On September 11, 2012, Coppinger again emailed respondent, stating that it had been three weeks since her original request and that she still had not received her file materials and an accounting. Respondent received the September 11th email. However,

he never provided Coppinger with her file or a refund. And, respondent did not provide an accounting to Coppinger, until after the NDC was filed in the instant matter.

Respondent also failed to: (1) resolve the homeowner association dues debt; (2) provide substantive assistance to Coppinger's divorce attorney with respect to the second trust deed; and (3) contact the trust manager concerning preservation of Coppinger's inheritance income.

Respondent failed to provide any legal services of value to Coppinger and, therefore, earned no fees. He did not earn the $2,000 in advanced fees paid by Coppinger. Yet, he failed to refund any portion of the $2,000 fees paid to him by Coppinger.

Based on a complaint filed by Coppinger regarding respondent's conduct, the State Bar opened a disciplinary investigation on November 15, 2012. On that same date, a State Bar investigator mailed a letter to respondent at his State Bar membership records address requesting that he cooperate in the investigation by providing a written response to the allegations under investigation. Respondent received the letter.

On December 11, 2012, a State Bar investigator mailed a second letter to respondent at his State Bar membership records address again requesting that he cooperate in the investigation by providing a written response to the allegations under investigation. Respondent received the letter.

Respondent did not respond to the allegations under investigation as requested by the State Bar investigator.

Conclusions

Count Seven - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to respond to Coppinger or her divorce attorney regarding the tax ramifications associated with the pay-off of the second mortgage on the marital property, by failing to negotiate the outstanding homeowner association debt, and by failing to contact the manager of

Coppinger's trust to determine the ramifications that the potential bankruptcy would have on Coppinger's inheritance income, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Eight - (Rule 4-100(B)(3) [Maintain Records of Client Property/Render Appropriate Accounts])

On August 17, 2012, Coppinger terminated respondent and requested a full refund of the fees she had advanced to respondent. On September 5, 2012, Coppinger emailed respondent stating she had not received an accounting. Respondent stipulated that he never provided respondent with an accounting. (Stipulation as to Facts, Conclusions of Law and Admission of Documents, filed December 17, 2013, ¶40.)[4]

By failing to promptly provide Coppinger with an accounting, respondent failed to render appropriate accounts to a client regarding all funds of the client coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count Nine - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

By failing, upon termination of employment or any time thereafter, to refund to Coppinger any portion of the $2,000 unearned fee, respondent failed to promptly return an unearned fee in willful violation of rule 3-700(D)(2).

Count Ten - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

By not responding to State Bar's November 15, 2012 letter and not providing the State Bar with the information requested in that letter, and by not replying to State Bar's December 11,

[4] Respondent did not provide an accounting to Coppinger until after the July 9, 2013 filing of the NDC.

2012 letter and not providing the State Bar with the information requested in that letter, respondent did not cooperate with a State Bar investigation, and, thereby, willfully violated section 6068, subdivision (i).

Count Eleven - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By failing to release the client file to Coppinger, despite her requests, respondent failed to release promptly, upon termination of employment, at the request of the client all the client papers and property, in willful violation of rule 3-700(D)(1).

Case No. 12-O-18096 – The Magana Matter

Facts

On June 5, 2010, Maria Magana (Magana) employed respondent to obtain a divorce on her behalf. Magana also executed the retainer agreement on June 5, 2010, and paid $1,500 to respondent on that same date. Respondent represented to Magana that the divorce would be final within seven months of his retention.

On December 27, 2011, respondent filed the petition for dissolution and summons on behalf of Magana, thereby commencing the divorce proceeding. Respondent, however, never served Magana's husband, Juan Mendoza, with the summons and petition for dissolution. Respondent failed to perform any other legal services in furtherance of the dissolution matter.

During the summer of 2012, Magana went to respondent's office, where she was assured by an employee of respondent's office, that the dissolution matter was actively being moved

forward. A few months thereafter, Magana started calling respondent's office twice a week, leaving messages, inquiring as to the status of the matter. Respondent was never available to take Magana's calls and never returned any of her calls.

On January 11, 2013, Magana went to respondent's office to demand a refund; she effectively terminated respondent. Respondent paid Magana $500 of the $1,500 fee Magana had advanced to him and indicated that the remainder of any further refund would be forthcoming within the next week. Respondent never refunded the remaining unearned fees.

On December 17, 2013, the date on which the trial in this proceeding was held and on which the parties executed and filed their Stipulation as to Facts and Conclusions of Law and Admission of Documents, respondent still had not refunded any part of the remaining $1,000 advanced fee, which Magana had paid him. (Stipulation as to Facts and Conclusions of Law and Admission of Document, p. 10, ¶51.)

On December 20, 2012, the State Bar opened a disciplinary investigation concerning respondent's conduct based on a complaint filed by Magana.

On January 8, 2013, a State Bar investigator mailed a letter to respondent at his State Bar membership records address, requesting that respondent cooperate in the investigation by providing a written response to the allegations under investigation. Respondent received the letter.

On January 28, 2013, a State Bar investigator mailed a second letter to respondent at his State Bar membership records address, requesting that respondent cooperate and participate in the investigation by providing a written response to the allegations under investigation. Respondent received the letter.

Respondent did not respond to the allegations under investigation as requested in the January 8 and January 28, 2013 letters that he received from the investigator.

Conclusions

Count Twelve - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By failing to timely file and serve the dissolution summons and petition upon Magana's husband, by failing to actively promote the resolution of the divorce process for a period of approximately eighteen months, and by failing to perform any legal service to further the dissolution process, once having filed the petition for dissolution and summons on behalf of Magana, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count Thirteen - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Respondent refunded $500 of the $1,500 advanced fee to Magana. However, by failing to refund the remaining $1,000 of that $1,500 fee that Magana had advanced to him, respondent failed to refund a part of a fee paid to him in advance that had not been earned, in wilful violation of rule 3-700(D)(2).

Count Fourteen - (§ 6068, subd. (i) [Failure to Cooperate])

By not responding to the State Bar's January 8, 2013 letter or its January 28, 2013 letter, and not providing the State Bar with the information requested in those letters regarding its investigation of allegations made against respondent, respondent did not cooperate with a State Bar investigation, in willful violation of section 6068, subdivision (i).

Count Fifteen - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By failing to respond to Magana's repeated inquiries requesting the status of her divorce proceeding, respondent failed to respond to reasonable status inquiries of a client in a matter in

which respondent had agreed to provide legal services, in wilful violation of section 6068, subdivision (m).

Aggravation[5]

Prior Record of Discipline (Std. 1.5(a).)

Respondent has a record of two prior disciplines.

On July 17, 2013, the California Supreme Court issued order No. S200189, suspending respondent from the practice of law for two years, stayed, and placing him on probation for two years subject to conditions, including that he be actually suspended from the practice of law for a minimum of the first six months of probation and remain suspended until he makes restitution. His misconduct in six client matters included failure to communicate, failure to refund unearned fees, failure to provide an accounting, and failure to perform services competently. The misconduct occurred during the years 2009 through 2012. In aggravation, respondent engaged in multiple acts of misconduct, caused significant financial harm to several clients, and showed indifference to his wrongdoing, which was given minimal weight as he had not yet had the opportunity to complete any of his probationary obligations. In mitigation, respondent had no prior record of discipline, cooperated with the State Bar, provided evidence of good character, but was given only nominal weight for his physical difficulties. (Supreme Court case No. S200189; State Bar Court case Nos. 10-O-10327 et al.)

On November 20, 2013, in respondent's second disciplinary matter, the California Supreme Court issued order No. S213319, suspending respondent from the practice of law for two years, stayed, and placing him on probation for two years subject to conditions, including, among other things, that he be actually suspended from the practice of law for the first 120 days

[5] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

of probation. His misconduct, involving one client matter, included failure to perform services competently, failure to deposit funds in a client trust account, failure to provide an accounting, and failure to pay client funds. His misconduct occurred during the years 2010, through part of 2012. In aggravation, respondent had a prior record of discipline and engaged in multiple acts of misconduct. No mitigation was found. (Supreme Court case No. S213319; State Bar Court case No. 12-O-13441.)

Because respondent's misconduct in his two prior matters occurred contemporaneously with the current misconduct, it is appropriate in the instant matter to consider what the discipline would have been if all the charged misconduct during the time period had been brought as one case.[6] (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602.) "The aggravating force of prior discipline is generally diminished if the misconduct underlying it occurred during the same time period." (*Id.* at p. 619.)

Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)

Respondent's misconduct evidences multiple acts of wrongdoing and warrants consideration in aggravation.

Harm to Client/Public/Administration of Justice (Std. 1.5(f).)

Respondent caused significant harm to his clients. The evidence is clear and convincing that respondent has withheld from the Lopezes, Coppinger, and Magana advanced funds to which he was not entitled for well over a year. And, as a result of respondent's failure to perform the services for which the Uriases had retained him, their bankruptcy petition was dismissed and they had to hire another attorney and pay additional attorney fees in excess of what they had already paid to respondent. Additionally, Coppinger was physically and emotionally in turmoil because of respondent's abandonment of her case. She suffered weight

[6] The misconduct in the instant proceeding occurred from 2010, through January 2013.

loss and sleeplessness as a result of the stress. She had to hire another attorney to contact and deal with respondent, so that her legal issues could be addressed. Ultimately, respondent's failure to perform and/or communicate caused unnecessary delay in Coppinger's dissolution matter, which resulted in additional expense in obtaining the divorce.

Mitigation[7]

Cooperation with the State Bar (Std. 1.6(e).)

Respondent is entitled to mitigation for entering into a Stipulation as to Facts, Conclusions of Law and Admission of Documents. Respondent stipulated to culpability as to all counts, excluding the counts charging a failure to cooperate with the State Bar investigation. By stipulating to culpability regarding almost all of the charged misconduct alleged in the NDC, respondent demonstrated recognition of his wrongdoing and saved the State Bar Court time and resources in trying this case. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigating credit given for entering into a stipulation as to facts and culpability].) The weight of mitigation for entering into the stipulation, however, is tempered by respondent's failure to cooperate with the State Bar by not responding to the State Bar's investigation letters.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

[7] As set forth in Standard 1.2(g), "`mitigating circumstances' are factors surrounding a member's misconduct that demonstrate that the primary purposes of discipline warrant a more lenient sanction than what is otherwise specified in a given Standard." However, as respondent has already been given appropriate credit for mitigating circumstances in his prior disciplinary matters, based on his "good character," pro bono activities, and the physical difficulties from which he was suffering during the period of his misconduct, those same circumstances cannot again be considered to accord mitigating credit.

Standard 1.7 provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances.

In this case, the standards provide for the imposition of a minimum sanction ranging from reproval to actual suspension. (Standards 2.2(b), 2.5(b), 2.8(b), and 2.15.) Standard 1.7(a) provides that, "if a member commits two or more acts of misconduct and the standards specify different sanctions for each act, the most severe sanction must be imposed.

Standard 2.5(b) provides that actual suspension is appropriate for failing to perform legal services or properly communicate in multiple client matters, not demonstrating a pattern of misconduct. Standard 2.15 states in pertinent part that suspension not to exceed three years or reproval is appropriate for a violation of a provision of the Rules of Professional Conduct not specified in the Standards.[8]

Due to respondent's two prior disciplines, the court also looks to standard 1.8(b) for guidance. Standard 1.8(b) states that when an attorney has two prior records of discipline, disbarment is appropriate in the following circumstances, *unless* the most compelling mitigation circumstances clearly predominate or *the misconduct underlying the prior discipline occurred during the same time period as the current misconduct*: (1) actual suspension was ordered in any one of the prior disciplinary matters; (2) the prior disciplinary matters coupled with the current record of discipline demonstrate a pattern of misconduct; or (3) the prior disciplinary matters coupled with the current record of discipline demonstrate the member's unwillingness or inability to conform to ethical responsibilities. (Emphasis added.)

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in talismanic fashion. As the final and independent

[8] Rules 3-700(D) (1) and 3-700(D), among others, are not specified in the Standards.

arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton*, *supra*, 36 Cal.4th at p. 92.)

In addition, the court considers relevant decisional law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.) Ultimately, in determining the appropriate level of discipline, each case must be decided on its own facts after a balanced consideration of all relevant factors. (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059; *In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 940.)

The State Bar requested that respondent be disbarred from the practice of law in the State of California. Respondent, on the other hand, argued that in light of the fact that the misconduct in this proceeding and his two prior matters occurred during the same time period, the appropriate degree of discipline to be imposed in this proceeding would be a further actual suspension that does not exceed 90 days.

In determining the appropriate level of discipline to recommend, the court takes into consideration the timing of respondent's prior discipline. Although the present case marks respondent's third discipline, the court gives diminished weight to respondent's prior discipline due to the fact that the present misconduct occurred in the same time period as the misconduct in respondent's prior discipline matters. (*In the Matter of Hagen* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 153, 171; std. 1.8(b).) The court, therefore, must consider the totality of the findings in respondent's present and prior disciplines to determine what the discipline would have been, if all the charged misconduct in respondent's three discipline matters had been

brought as one case. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)[9]

In respondent's first discipline matter, Supreme Court case No. S200189 (State Bar Court case Nos. 10-O-10327 et al.) (*Cooke I*), the Court ordered that respondent be actually suspended for the first six months of his probation. In respondent's second discipline matter, the Hearing Department of the State Bar Court, using a *Sklar* analysis, considered the totality of the findings in respondent's two discipline cases to determine what the appropriate discipline would have been if all the charged misconduct had been brought as one case. The misconduct found in *Cooke I* and in respondent's second discipline matter, when combined, involved seven client matters and 16 counts of misconduct, spanning from 2009 through 2012. The hearing department concluded, among other things, that a ten-month actual suspension would have been the appropriate discipline, if respondent's two discipline matters had both been brought as one case. Therefore, it recommended to the California Supreme Court that respondent be actually suspended for an additional 120 days in respondent's second discipline matter. The Court, thereafter, issued an order in respondent's second discipline case, Supreme Court case No. S213319 (State Bar Court case No. 12-O-13441) (*Cooke II).* Among other things, the Court ordered that respondent be suspended from the practice of law for the first 120 days of his probation.

In the instant proceeding (*Cooke III*), this court must again determine what the appropriate discipline would be, given that the misconduct in respondent's three discipline

[9] The misconduct found in respondent's second prior discipline occurred during the same time period as the misconduct in his first discipline matter. The combined prior cases involved seven client matters and 16 counts, spanning from 2009 through 2012. The misconduct found in respondent's prior cases and the current matter combined involved 11 client matters and 30 counts, spanning from 2009 to January 2013.

matters occurred in the same time period and involved eleven clients and 30 counts of misconduct.

The court finds guidance in *Bledsoe v. State Bar* (1991) 52 Cal.3d 1074 and *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

In *Bledsoe*, the attorney abandoned four clients. He failed to perform services, failed to communicate with his clients, failed to return unearned fees, and failed to cooperate with the State Bar. In mitigation, the attorney had no prior record of discipline in 17 years of practice. However, he defaulted in the State Bar Court disciplinary proceedings. The Supreme Court suspended the attorney for five years, stayed the execution, and placed Bledsoe on probation for five years on conditions, including a two-year actual suspension and payment of restitution.

In *Brockway*, the attorney abandoned four clients and failed to competently perform, failed to communicate, failed to provide accountings, failed to refund unearned fees, failed to return client files, and improperly agreed to withdraw a State Bar complaint. The review department found no mitigation, but did find aggravation due to a prior record of discipline, multiple acts of misconduct, significant client harm, a failure to atone for the consequences of his behavior, and additional uncharged misconduct involving an act of moral turpitude due to overreaching. The court determined that the appropriate disciplinary recommendation was a five-year suspension and five years of probation on conditions including that the attorney must remain suspended until he has complied with former Standard 1.4(c)(ii).[10]

While the current matter contains many similarities with *Bledsoe* and *Brockway*, there are also significant differences. Like the attorneys in *Bledsoe* and *Brockway*, respondent in the

[10] Due to the revision of the Rules of Procedure of the State Bar of California, former Standard 1.4(c)(ii), has been revised, effective January 1, 2014, as Standard 1.2(c)(1).

current matter abandoned four clients, failed to competently perform, failed to communicate, failed to provide accountings, failed to refund unearned fees, failed to return a client file, and failed to cooperate in the initial stages of the State Bar investigation regarding 2 client matters. Among the significant differences, respondent, unlike Bledsoe, did not default in the disciplinary proceedings; respondent participated and cooperated by stipulating to facts and culpability. And, unlike Brockway, respondent did not engage in an act involving moral turpitude. However, the present case involves more client misconduct than either *Bledsoe* or *Brockway*.

As this court noted in *Cooke II*, respondent's misconduct lies not with dishonesty or intent, but rather with carelessness and respondent's negligent reliance on office staff to the detriment of his clients. Respondent credibly testified that he had overextended his practice taking on far too many cases and inappropriately relying on office staff to deal with clients. Not only did that result in harm to his clients, but harm to himself, e.g., the stress and overwork were contributing factors to respondent's 2011 heart attack. Respondent acknowledged that he "bit off more than [he] could chew." He admitted that he lacks the business experience to manage a large staff and will not do so in the future. He credibly testified that he would never "go to that level of practice." He further indicated that he never wanted to "disappoint" his clients and he did not want to have another heart attack, and, therefore would downsize his caseload.

Here, however, the court must consider the totality of the findings in respondent's three cases and determine what the discipline would have been had all the charged misconduct been brought as one case. Respondent's prior cases and the current matter, combined, involve 11 clients, in excess of what the court normally has considered when imposing a two-year suspension. However, as the court pointed out, where disbarment has been imposed the court has found the "attorney's actions to be 'reprehensible, corrupt, [and] dishonest. . . .'" (*In the*

Matter of Brockway, *supra*, 4 Cal. State Bar Ct. Rptr. 944,961.) Such is not the case in the instant matter.

Accordingly, the court concludes that a three-year actual suspension and restitution would have been appropriate had all of respondent's cases been brought as one case.

In view of the extent and nature of respondent's misconduct, the case law, the aggravating and mitigating evidence, and the imposition of a total of 10 months' actual suspension in his two previous discipline matters, the court concludes that placing respondent on an additional actual suspension of 30 months in the current matter would be appropriate to protect the public and to preserve public confidence in the profession.[11]

Recommendations

It is recommended that respondent Kenneth Matthew Cooke, State Bar Number 159341, be suspended from the practice of law in California for five years, that execution of that period of suspension be stayed, and that respondent be placed on probation[12] for a period of five years subject to the following conditions:

1. Respondent Kenneth Matthew Cooke is suspended from the practice of law for a minimum of the first 30 months of probation, and respondent will remain suspended until the following requirement(s) are satisfied:

    i. Respondent must make restitution to Hugo Sotelo and Maria Lopez in the amount of $1,450 plus 10 percent interest per year from April 1, 2010, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Hugo Sotelo and Maria Lopez, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

[11] To further insure that the purposes of attorney discipline are met, this court is recommending, among other things, that respondent remain suspended until he provides satisfactory proof of rehabilitation to the court and until he makes specified restitution to three clients. Additionally, an additional probation condition requires that respondent must develop a law office management/organization plan, to be approved by the Office of Probation and comply with said plan.

[12] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

ii. Respondent must make restitution to Chris Tyson-Coppinger in the amount of $2,000 plus 10 percent interest per year from August 19, 2012, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Chris Tyson-Coppinger, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles;

iii. Respondent must make restitution to Maria Magana in the amount of $1,000 plus 10 percent interest per year from January 12, 2013, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Maria Magana, in accordance with Business and Professions Code section 6140.5) and furnish proof to the State Bar's Office of Probation in Los Angeles; and

Respondent must furnish proof of all restitution to the State Bar's Office of Probation in Los Angeles and must reimburse the Client Security Fund, to the extent of any payment from the fund to the aforementioned recipients, in accordance with Business and Professions Code section 6140.5).

iv. Respondent must provide satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.

5. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of

probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

8. Within 45 days after the effective date of the discipline herein, respondent must develop a law office management/organization plan (LOMP) which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Office of Probation. This plan must include procedures for sending periodic reports to clients, documentation of telephone messages received and sent, file maintenance, meeting deadlines, withdrawing as attorney, whether of record or not, when clients cannot be contacted or located, and training and supervision of support personnel. Respondent must comply with the LOMP throughout the entirety of his probation period and state in writing with each of the quarterly reports, which he is required to make during his probation period, whether he has complied with his LOMP.

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination during the period of his suspension and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: March _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court